

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
	)	
v.	)	Criminal No. 19-cr-00013-WMW-DTS
	)	
BRETT PALKOWITSCH,	)	Hon. Wilhelmina M. Wright
Defendant.	)	United States District Judge

**JOINT MOTION TO CONTINUE SENTENCING**

The United States of America and Defendant Brett Palkowitsch (the “parties”), through the undersigned attorneys, respectfully and jointly move to continue sentencing in the above-captioned case, which is currently scheduled for October 16, 2020. In support of this motion, the parties offer the following information and argument.

Sentencing was initially scheduled for April 2, 2020, but had to be rescheduled in light of Chief Judge Tunheim’s Administrative Order, dated March 17, 2020, continuing sentencing proceedings district-wide in light of the COVID-19 pandemic. (Doc. Nos. 135-137). The Defendant filed a Notice of Non-Consent to Sentencing by Video Conferencing, and the Court scheduled an in-person sentencing hearing for October 16, 2020 (Doc. Nos. 138, 140). The United States filed a consented-to Motion for Leave of Court to Attend the Sentencing Hearing Via Video-Conference, which the Court denied (Doc. Nos. 142-143). On September 25, 2020, Chief Judge Tunheim issued the Court’s nineteenth Administrative Order addressing court operations during the COVID-19 pandemic, specifically finding that “the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota” and that “felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted in person without seriously jeopardizing public health and safety.”

Those public health and safety concerns are compounded in this case by the risk that undersigned counsel for the United States will be exposed to COVID-19 during the two-and-a-half hour flight from D.C. to Minnesota and the overnight hotel stay before the hearing; and the risk that undersigned counsel, if unknowingly exposed to COVID-19, could expose anyone with whom he comes into contact at the in-person sentencing hearing.<sup>1</sup> (This case was prosecuted by the Civil Rights Division of Department of Justice, and not the U.S. Attorney's Office, so travel is necessary to attend any in-person hearings). The Protocol for In-Person Hearings in the District of Minnesota appears well-designed to mitigate the threat of COVID-19 transmission, but it bears mention that similarly strict safety precautions in the Eastern District of Kentucky did not prevent an entire trial team (two federal prosecutors, an FBI agent, an ATF agent, and a victim-witness coordinator), as well as several members of their families, from contracting COVID-19 after a two-week trial in early September 2020. Moreover, the parties anticipate that sentencing in this case will be attended by the victim, F.B., as well as by approximately twenty of the Defendant's friends, family members, and supporters, some of whom will be traveling from out of state. For these reasons, the parties respectfully submit that the risk of exposure in this case outweighs the interest in prompt sentencing, and therefore move to continue sentencing in this case.

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<sup>1</sup> According to guidance posted on the website of the U.S. Center for Disease Control, "Travel increases your chances of getting and spreading COVID-19" and air travel in particular carries a heightened risk because it "requires spending time in security lines and airport terminals, which can bring you in close contact with other people and frequently touched surfaces" and because "social distancing is difficult on crowded flights, and you may have to sit near others (within 6 feet), sometimes for hours." See "Coronavirus Disease 2019 (COVID-19): Travel: Frequently Asked Questions and Answers," *Center for Disease Control and Prevention*, available at [www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html](http://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html) (updated Sept. 14, 2020). Data collected by the Minnesota Department of Health indicates that approximately 9% of COVID cases in Minnesota with a traced source were spread by individuals traveling to Minnesota from out-of-state. See "Situation Update for COVID-19," *Minnesota Department of Health*, available at <https://www.health.state.mn.us/diseases/coronavirus/situation.html#expom1> (updated Sept. 29, 2020).

Respectfully submitted,

UNITED STATES OF AMERICA, by

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